

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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GRACE ALBANESE,

Plaintiff,

V.

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT, et al.,

## Defendants.

Case No. 2:17-cv-00577-GMN-PAL

# **REPORT OF FINDINGS AND RECOMMENDATION**

(2nd Am. Compl. – ECF No. 50)

13 This matter is before the court for a screening of Plaintiff Grace Albanese's Second  
14 Amended Complaint (ECF No. 50). This screening is referred to the undersigned pursuant to 28  
15 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local Rules of Practice.

16 || J. BACKGROUND

17 Ms. Albanese is proceeding in this action *pro se*, that is, representing herself, and she has  
18 been given permission to proceed *in forma pauperis* (“IFP”). *See* Screening Order (ECF No. 12).  
19 On February 23, 2017, Ms. Albanese commenced this action by filing an IFP Application (ECF  
20 No. 1) and complaint. This case arises from her allegations, pursuant to 28 U.S.C. § 1983, that  
21 defendants violated her civil rights. Upon initial review of the complaint, the court issued a  
22 Screening Order (ECF No. 12) instructing Ms. Albanese to file an amended complaint to correct  
23 certain defects in her pleading.

24 On May 9, 2017, the court issued a second Screening Order (ECF No. 30) dismissing the  
25 Amended Complaint (ECF No. 17) for failure to state a colorable claim and granting her leave to  
26 amend her pleading. On June , 2017, she filed her Second Amended Complaint (ECF No. 50),  
27 which the court will now screen.

1           Additionally, the court notes that both prior screening orders acknowledged that Ms.  
2 Albanese has submitted numerous letters to the court since filing this action. *See* Screening Order  
3 (ECF No. 15) (citing Pl.’s Letters (ECF Nos. 2, 4, 5, 6, 7, 8, 9, 10, 11)); Screening Order (ECF  
4 No. 30) (citing Pl.’s Letters (ECF Nos. 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28)).  
5 Albanese was explicitly informed that she may not request relief from the court by letter. However,  
6 she has continued to file numerous improper letters. *See* Pl.’s Letters (ECF Nos. 31, 32, 33, 34,  
7 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62,  
8 63, 64, 65, 66, 67).

9           Letters to judges are not motions authorized by the Federal Rules of Civil Procedure or the  
10 Local Rules of Practice.<sup>1</sup> LR IA 7-1(b) (stating that “all communications with the court must be  
11 styled as a motion, stipulation, or notice”). “It is well established that district courts have inherent  
12 power to control their docket.” *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir.  
13 2010). This includes the power to strike improperly filed items from the docket. *Id.* at 404–05;  
14 *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 586–87, 588 (9th Cir. 2008). Such power enables  
15 the court to enforce its orders, manage its docket, and regulate insubordinate litigation conduct.  
16 *Adobe Sys. Inc. v. Christenson*, 891 F. Supp. 2d 1194, 1201 (D. Nev. 2012). Litigation misconduct  
17 includes the filing of procedurally improper documents. *See id.*

18           Ms. Albanese may not send judges case-related correspondence requesting that the court  
19 take some action on her behalf. Any request for relief from the court must be filed as a motion  
20 supported by a memorandum of points and authorities. *See* LR 7-2. Albanese is warned that if  
21 she continues to file letters, requesting relief that has already been denied, or continues to make  
22 frivolous, unsupported requests it may result in the imposition of sanctions up to and including  
23 dismissal of this case.

24           **II. SCREENING THE AMENDED COMPLAINT**

25           After granting a litigant’s IFP request, a federal court must screen the complaint and any  
26 amended complaints filed prior to a responsive pleading pursuant to § 1915(e). *Lopez v. Smith*,  
27 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (§ 1915(e) applies to “all in forma pauperis

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28           <sup>1</sup> Any reference to a “Rule” or the “Rules” in this Order refer to the Federal Rules of Civil Procedure.

1       complaints”). If the complaint states a valid claim for relief, the court will direct the Clerk of the  
2       Court to issue summons to the defendant(s) and the plaintiff must then serve the summons and  
3       complaint within 90 days. *See Fed. R. Civ. P. 4(m)*. When a court dismisses a complaint pursuant  
4       to § 1915(e), a plaintiff is ordinarily given leave to amend with directions as to curing its  
5       deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be  
6       cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

7       Allegations in a *pro se* complaint are held to less stringent standards than formal pleading  
8       drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Hebbe v. Pliler*, 627 F.3d 338,  
9       342 n.7 (9th Cir. 2010). However, *pro se* litigants “should not be treated more favorably than  
10      parties with attorneys of record,” *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986); rather,  
11      they must follow the same rules of procedure that govern other litigants. *Ghazali v. Moran*, 46  
12      F.3d 52, 54 (9th Cir. 1995).

13      **A. Ms. Albanese’s Revised Factual Allegations and Claims for Relief**

14      The Second Amended Complaint (ECF No. 50) names as defendants the Las Vegas  
15      Metropolitan Police Department (“LVMPD”) and LVMPD employees, Carroll Denny and Sargent  
16      Cory Staheli. Ms. Albanese alleges that LVMPD has a policy of “unquestionable disrespect”  
17      towards her that violates the cruel and unusual clause of the constitution. *Id.* at 4–5. The policy  
18      “requires all LVMPD employees to use cruel and unusual conduct” towards her and it resulted in  
19      violations of her equal protection and due process rights. *Id.* at 5. Municipal liability should be  
20      imposed on LVMPD for its “reckless indifference to maintaining civility and order.” *Id.* at 5–6.  
21      LVMPD’s consistent pattern of uncivil behavior is the norm and might be an attempt to deter  
22      Albanese from using police services. *Id.* at 6. Defendants Denny and Staheli, in particular, have  
23      applied the policy to Albanese whenever she comes in contact with the police. LVMPD’s policy  
24      and dealings with her have created a hostile relationship and resulted in her lack of trust, which  
25      “this and many lawsuits can confirm.” *Id.* at 7.<sup>2</sup> So cruel is LVMPD’s opinion of Albanese that

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27      <sup>2</sup> Since March 2016, Ms. Albanese has filed 34 federal cases in the District of Nevada, 32 of which are  
28      currently ongoing, and nine of which are pending before the undersigned. *See Albanese v. Fed. Bureau of  
Investigations*, 2:16-cv-00529-KJD-NJK; *Albanese v. Transp. Security Admin.*, 2:16-cv-00530-GMN-  
CWH; *Albanese v. Homeland Security*, 2:16-cv-00531-RFB-VCF; *Albanese v. Las Vegas Metro. Police*

1 “a policy of uncivilized hostility is the norm and municipal liability the answer.” *Id.*

2 Ms. Albanese alleges that the defendants’ actions violated her rights to free speech, equal  
3 protection, and due process, as well as her right to be free of public corruption. *Id.* at 11. She  
4 asserts that she has mental distress injuries resulting from LVMPD’s policy and she seeks  
5 \$500,000 in damages. *Id.* at 8.

6 For the reasons discussed below, the court finds that the Second Amended Complaint fails  
7 to state a colorable claim. The court will therefore recommend dismissal of this case.

8 **B. Legal Standard**

9 Federal courts are required to dismiss an IFP action if the complaint fails to state a claim  
10 upon which relief may be granted, is legally “frivolous or malicious,” or seeks monetary relief  
11 from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). In determining whether  
12 a complaint is frivolous and therefore warrants complete or partial dismissal, a court is not bound  
13 to accept without question truth of plaintiff’s allegations. *Denton v. Hernandez*, 504 U.S. 25, 32  
14 (1992). Allegations are frivolous when they are “clearly baseless,” *id.*, or lack an arguable basis

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15 *Dep’t, 2:16-cv-00532-RFB-GWF; Albanese v. Regional Transp. Comm’n of So. Nev., 2:16-cv-01882-APG-  
16 PAL; Albanese v. Las Vegas Metro Police Dep’t, 2:17-cv-00577-GMN-PAL; Albanese v. Las Vegas Metro.  
17 Police Dep’t, 2:17-cv-01087-GMN-GWF; Albanese v. Las Vegas Metro. Police Dep’t, 2:17-cv-01284-  
18 MMD-NJK; Albanese v. Las Vegas Metro. Police Dep’t, 2:17-cv-01285-JCM-VCF, appeal docketed, No.  
19 17-16127 (9th Cir. May 31, 2017); Albanese v. Fed. Bureau of Investigations, 2:17-cv-01286-JAD-PAL;  
20 Albanese v. Dep’t of Homeland Security, 2:17-cv-01287-JCM-PAL; Albanese v. Las Vegas Metro. Police  
21 Dep’t, 2:17-cv-01520-JAD-CWH; Albanese v. Las Vegas Metro. Police Dep’t, 2:17-cv-01544-RFB-PAL;  
22 Albanese v. Las Vegas Metro. Police Dep’t, 2:17-cv-01573-JCM-GWF; Albanese v. Las Vegas Metro.  
23 Police Dep’t, 2:17-cv-01574-RFB-PAL; Albanese v. Fed. Bureau of Investigations, 2:17-cv-01599-JAD-  
24 VCF; Albanese v. Las Vegas Metro. Police Dep’t, 2:17-cv-01600-JAD-VCF; Albanese v. Las Vegas Metro.  
25 Police Dep’t, 2:17-cv-01613-APG-PAL; Albanese v. Fed. Bureau of Investigations, 2:17-cv-01614-JAD-  
26 PAL; Albanese v. Las Vegas Metro. Police Dep’t, 2:17-cv-01633-JAD-VCF; Albanese v. Las Vegas Metro.  
27 Police Dep’t, 2:17-cv-01634-RFB-CWH; Albanese v. Fed. Bureau of Investigations, 2:17-cv-01635-JAD-  
28 CWH; Albanese v. Las Vegas Metro. Police Dep’t, 2:17-cv-01640-MMD-VCF; Albanese v. Fed. Bureau  
of Investigations, 2:17-cv-01641-JAD-GWF; Albanese v. Homeland Security, 2:17-cv-01642-RFB-GWF;  
Albanese v. Fed. Bureau of Investigations, 2:17-cv-01662-JAD-NJK; Albanese v. Homeland Security, 2:17-  
cv-01663-JCM-NJK; Albanese v. Las Vegas Metro. Police Dep’t, 2:17-cv-01664-JCM-GWF; Albanese v.  
Las Vegas Metro. Police Dep’t, 2:17-cv-01735-JCM-PAL; Albanese v. Las Vegas Metro. Police Dep’t,  
2:17-cv-01780-JCM-VCF; Albanese v. Las Vegas Metro. Police Dep’t, 2:17-cv-01782-JCM-VCF;  
Albanese v. Las Vegas Metro. Police Dep’t, 2:17-cv-01795-JAD-GWF; Albanese v. Las Vegas Metro.  
Police Dep’t, 2:17-cv-01807-JCM-GWF; Albanese v. Las Vegas Metro. Police Dep’t, 2:17-cv-01808-APG-  
GWF. In all, she has sued LVMPD 21 times in just over a year. Ms. Albanese is warned that duplicative  
lawsuits with virtually identical causes of action are subject to dismissal under 28 U.S.C. § 1915. See  
*Denton v. Hernandez*, 504 U.S. 25, 30 (1992); *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir.  
1995).*

1 in law and fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Frivolous claims include those  
2 based on legal conclusions that are untenable (e.g., claims against defendants who are immune  
3 from suit or claims of infringement of a legal interest that clearly does not exist), as well as claims  
4 based on fanciful factual allegations (e.g., fantastic or delusional scenarios). *Id.* at 327–28;  
5 *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991). A complaint may be dismissed as frivolous  
6 if it “merely repeats pending or previously litigated claims.” *Cato*, 70 F.3d at 1105 n.2 (affirming  
7 that duplicative litigation is “an independent ground for dismissal”). The standard for determining  
8 whether a plaintiff fails to state a claim upon which relief can be granted under § 1915 is the same  
9 as the standard under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a  
10 claim. *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). A district court may dismiss a  
11 plaintiff’s complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ.  
12 P. 12(b)(6). Review under Rule 12(b)(6) is essentially a ruling on a question of law. *N. Star*  
13 *Intern. v. Ariz. Corp. Comm’n*, 720 F.2d 578, 580 (9th Cir. 1983).

14 A properly pled complaint must provide “a short and plain statement of the claim showing  
15 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *accord Bell Atlantic Corp. v. Twombly*,  
16 550 U.S. 544, 555 (2007). The simplified pleading standard set forth in Rule 8(a) applies to all  
17 civil actions with limited exceptions. *Alvarez v. Hill*, 518 F.3d 1152, 1159 (9th Cir. 2008).  
18 Although Rule 8 does not require detailed factual allegations, it demands “more than labels and  
19 conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*,  
20 556 U.S. 662, 678 (2009) (citation omitted). Mere recitals of the elements of a cause of action  
21 supported only by conclusory allegations do not suffice. *Iqbal*, 556 U.S. at 679–80. A complaint  
22 “must contain sufficient allegations of underlying facts to give fair notice and to enable the  
23 opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).  
24 Where the claims in the complaint have not crossed the line from plausible to conceivable, the  
25 complaint should be dismissed. *Twombly*, 550 U.S. at 570. Stated differently, the factual  
26 allegations “must plausibly suggest an entitlement to relief, such that it is not unfair to require the  
27 opposing party to be subjected to the expense of discovery and continued litigation.” *Starr*, 652  
28 F.3d at 1216.

### C. Analysis

42 U.S.C. § 1983 provides a mechanism for the private enforcement of substantive rights conferred by the Constitution and federal statutes. *Graham v. Connor*, 490 U.S. 386, 393–94 (1989). Section 1983 “‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). To state a claim under § 1983, a plaintiff must allege: (1) the deprivation of any rights, privileges, or immunities secured by the Constitution; (2) by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48–49 (1988); *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006). To adequately plead these elements, the complaint must identify what constitutional or other federal right each defendant violated, providing sufficient facts to plausibly support each purported violation. *See, e.g., Drawsand v. F.F. Props., L.L.P.*, 866 F. Supp. 2d 1110, 1121 (N.D. Cal. 2011).

Ms. Albanese’s Second Amended Complaint fails to correct the deficiencies noted in the last Screening Order (ECF No. 31). She makes conclusory allegations that Defendants Staheli and Denny violated her due process, equal protection, and free speech rights when they followed LVMPD’s policy of using “unquestionable disrespect,” “uncivil behavior,” and “cruel and unusual conduct” towards her. The Eighth Amendment’s prohibition on cruel and unusual punishments applies only “after conviction and sentence.” *Graham v. Connor*, 490 U.S. 386, 393 & n.6 (1989) (citing *Ingraham v. Wright*, 430 U.S. 651, 671 n.40 (1977)). Albanese does not allege that she is a prisoner convicted of a crime; thus, the Eighth Amendment does not apply. *See Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001).

The court previously explained to Ms. Albanese that the Due Process Clause of the Fourteenth Amendment does not require LVMPD or its employees to provide her with any particular services. *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 196–97 (1989); *Estate of Amos ex rel. Amos v. City of Page, Arizona*, 257 F.3d 1086, 1091 (9th Cir. 2001). At their core, Albanese’s allegations express her disapproval of defendants’ decisions, but her allegations do not create a plausible civil rights violation.

In addition, First Amendment does not guarantee Ms. Albanese a right to receive the desired response from LVMPD to redress her grievances. *See Minn. State Bd. for Cmtys. Colls. v. Knight*, 465 U.S. 271, 283, 285 (1984). An individual “can associate and speak freely and petition openly, and he is protected by the First Amendment,” but that “does not impose any affirmative obligation on the government to listen [or] to respond” to grievances. *Smith v. Arkansas State Highway Employees*, 441 U.S. 463, 465 (1979). Defendants are not obligated to respond to Albanese’s requests in the manner of her choosing.

Furthermore, Ms. Albanese has not alleged that defendants discriminated against her based on her membership in any protected class such as race, gender, national origin, or religion. *See Hartmann v. Cal. Dep’t of Corr. & Rehab.*, 707 F.3d 1114, 1123 (9th Cir. 2013). Thus, her allegations do not suggest an equal protection violation.

Ms. Albanese has not stated an actionable § 1983 claim against LVMPD or its employees, Staheli and Denny. The court will therefore recommend that the Second Amended Complaint be dismissed. Because Albanese has repeatedly failed to cure the deficiencies in her pleading, the court will not recommend leave to amend.

Accordingly,

**IT IS RECOMMENDED:**

1. Plaintiff Grace Albanese's Second Amended Complaint (ECF No. 50) be **DISMISSED**.
2. The Clerk of the Court be instructed to close this case and enter judgment accordingly.

Dated this 30th day of June, 2017.

Peggy A. Teer  
PEGGY A. TEER  
UNITED STATES MAGISTRATE JUDGE

## NOTICE

This Report of Findings and Recommendation is submitted to the assigned district judge pursuant to 28 U.S.C. § 636(b)(1) and is not immediately appealable to the Court of Appeals for the Ninth Circuit. Any notice of appeal to the Ninth Circuit should not be filed until entry of the

1 district court's judgment. *See* Fed. R. App. Pro. 4(a)(1). Pursuant to LR IB 3-2(a) of the Local  
2 Rules of Practice, any party wishing to object to a magistrate judge's findings and  
3 recommendations shall file and serve *specific written objections*, together with points and  
4 authorities in support of those objections, within 14 days of the date of service. *See also* 28 U.S.C.  
5 § 636(b)(1); Fed. R. Civ. Pro. 6, 72. The document should be captioned "Objections to Magistrate  
6 Judge's Report of Findings and Recommendation," and it is subject to the page limitations found  
7 in LR 7-3(b). The parties are advised that failure to file objections within the specified time may  
8 result in the district court's acceptance of this Report of Findings and Recommendation without  
9 further review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). In addition,  
10 failure to file timely objections to any factual determinations by a magistrate judge may be  
11 considered a waiver of a party's right to appellate review of the findings of fact in an order or  
12 judgment entered pursuant to the recommendation. *See Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th  
13 Cir. 1991); Fed. R. Civ. Pro. 72.

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